

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

TRADESHIFT, INC.,

Plaintiff,

v.

SMUCKER SERVICES COMPANY,

Defendant.

**~~PROPOSED~~ CIVIL CASE DISCOVERY  
PLAN AND SCHEDULING ORDER**

Case No. 1:20-cv-03661(ER)

This Civil Case Discovery Plan and Scheduling Order is adopted, after consultation with counsel, pursuant to Fed. R. Civ. P. 16 and 26(f):

1. All parties do not consent to conducting all further proceedings before a Magistrate Judge, including motions and trial, pursuant to 28 U.S.C. § 636(c). The parties are free to withhold consent without adverse substantive consequences. (If all parties consent, the remaining paragraphs of this form need not be completed.)
2. This case is to be tried to a jury.
3. Joinder of additional parties must be accomplished by September 25, 2020.
4. Amended pleadings may be filed until September 25, 2020.
5. Interrogatories shall be served no later than February 12, 2021, and responses thereto shall be served within thirty (30) days thereafter. The provisions of Local Civil Rule 33.3 shall not apply to this case.
6. First request for production of documents, if any, shall be served no later than August 28, 2020.
7. Non-expert depositions shall be completed by April 9, 2021.
  - a. Unless counsel agree otherwise or the Court so orders, depositions shall not be held until all parties have responded to any first requests for production of documents.
  - b. Depositions shall proceed concurrently.
  - c. Whenever possible, unless counsel agree otherwise or the Court so orders,

non-party depositions shall follow party depositions.

8. Any further interrogatories, including expert interrogatories, shall be served no later than February 12, 2021.
9. Requests to Admit, if any, shall be served no later than February 12, 2021.
10. Expert reports shall be served no later than May 26, 2021.
11. Rebuttal expert reports shall be served no later than June 23, 2021.
12. Expert depositions shall be completed by July 28, 2021.
13. Additional provisions agreed upon by counsel are attached hereto and made a part hereof.
14. **ALL DISCOVERY SHALL BE COMPLETED BY JULY 28, 2021.**
15. Any motions shall be filed in accordance with the Court's Individual Practices.
16. This Civil Case Discovery Plan and Scheduling Order may not be changed without leave of Court (or the assigned Magistrate Judge acting under a specific order of reference).
17. The Magistrate Judge assigned to this case is the Hon. Katharine H. Parker.
18. If, after entry of this Order, the parties consent to trial before a Magistrate Judge, the Magistrate Judge will schedule a date certain for trial and will, if necessary, amend this Order consistent therewith.
19. The next case management conference is scheduled for July 28, 2021,  
at 11:30 AM. (The Court will set this date at the initial conference.)

SO ORDERED.

Dated: New York, New York

August 17, 2020



Edgardo Ramos, U.S. District Judge

The parties agree and stipulate to the following:

1. Agreement for electronic service:

- a. The parties agree to e-service for documents, pleadings, and motions.

2. Mediation:

- a. The parties are interested in mediation and are exploring the best time to explore resolution.

3. Expert Communications and Reports:

- a. Within three days after the disclosure of any expert report, the disclosing party shall send the opposing party—by FTP link or overnight mail—a copy of all documents cited in the expert report.
- b. Communications between counsel and retained testifying expert witness shall not be subject to discovery, unless the communications: (i) identify facts or data that counsel provided and that the expert considered or relied upon forming the opinions to be expressed; and/or (ii) identify assumptions that counsel provided and that the expert relied upon in forming the opinions to be expressed.
- c. Notwithstanding the forgoing, communications between counsel and a retained expert during deposition shall not be discoverable. Communications and documents exchanged between counsel and non-testifying retained consulting expert witnesses are not discoverable. In addition, any draft reports, notes, working papers, or other preparatory materials, in whatever form, prepared by any retained expert or any person working with a retained expert, shall not be subject to discovery.

Dated: August 6, 2020

By: /s/ Richard F. Martinelli  
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Dated: August 6, 2020

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*\*Signed with consent of counsel*